THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION NO.24165 OF 2003

%14.12.2004

#Maharaja Alak Narayana Science & Arts Society (MANSAS), Vizianagaram Fort, Vizianagaram, rep.by its Secretary.

...PETITIONER

Vs.

$Smt Buddaraju Sarojini, W/o Chiranjeevi Raju and others

...RESPONDENTS

! Counsel for the petitioner: Mr.B.Adinarayana Raju

Counsel for the Respondent No.1: Mr.K.Subramanya Reddy

Counsel for Respondents 2 to 5: G.P. for Revenue

<Gist :

>Head Note:

? Cases referred:

1. 1981 (2) APLJ 158 (DB)
2. 2003 (4) SCC 488
3. 1971 (2) AnWR 138
4. 1995 Supp (3) SCC 249

5. 1964 (2) AnWR 73

6. AIR 1969 SC 1297

7. (1984) 1 SCC 125

8. (1994) 1 SCC 44

9. AIR 1998 SC 688

10. (1987) 4 SCC 497 : AIR 1987 SCC 2316

11. (1989) 1 SCC 532 : AIR 1989 SC 973

12. (1872) LR Eq CA 322, 325 : 41 LJ Ch 472 : 25 LT 894

13. AIR 1991 Ori 139

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 24165 of 2003

Between:

Maharaja Alak Narayana Science & Arts Society(Mansas) rep.by its Secretary, Vizianagaram Fort, Vizianagaram.

(C.T. is amended as per Court order dated 17.11.2003 in

WPMPNo.30399 of 2003)

..... PETITIONER

AND

1 Smt.Buddaraju Sarojini, W/o. Chiranjeevi Raju,
R/o. K.L.Puram Village, Vizianagaram Mandal.
2 The Commissioner, Appeals, Land Administration,

A.P.,Abids, Hyderabad.
3 The Collector, Vizianagaram District, Vizianagaram.
4 The Revenue Divisional officer, Vizianagaram District, Vizianagaram.
5 The Mandal Revenue Officer, Vizianagaram Mandal, Vizianagaram.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a rule nisi calling for records leading upto and inclusive of the impugned order passed by the 2nd respondent herein in Roc.No.VI/808/2001 dt.25-7-03 to issue any appropriate writ, order or direction more especially in the nature of writ of Certiorari for questioning the impugned proceedings issued by the 2nd respondent in commissioner appeals Roc.No.VI/808/2001 dated 25-7-2003 and pass such other and further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.M.ADINARAYANA RAJU

Counsel for the Respondent No.1: Sri K.Subramanya Reddy, Senior Advocate, representing Mr. S.Khader Mohiddin.

Counsel for Respondents 2 to 5: G.P. for Revenue

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24165 OF 2003

ORDER:

This Writ Petition is filed by Maharaja Alak Narayana Science & Arts Society (for brevity, MANSAS), Vizianagaram, seeking a Writ of Certiorari to call for the records leading to passing of the orders in proceedings Roc.No.VI/808/2001, dt.25.7.2003 by which second respondent set aside the proceedings of Special Deputy Tahsildar (SDT) (Inams), Vizianagaram, dt.18.11.1978 and subsequent order of the Revenue Divisional officer, Vizianagaram, dt.30.5.2001 and remitted matter back to the

primary tribunal for enquiry under the provisions of Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (hereafter called, the Act). The fact of the matter in brief is as follows.

The Inams Abolition Act came into force on 26.9.1956. A Trust Deed dt.12.11.1958 was executed by Kumararaja of Vizianagaram constituting MANSAS for the land admeasuring Acs.20.00 in S.No.64-2/3. The land was, however, handed over to the trust on 26.9.1963 to the extent he was entitled to. To have an idea to what is the extent of the land to which he was entitled to, some more details are necessary. Some time prior to 1887, the land in question was given to Venkat Rao Panthulu vide T.D.No.984. On 20.2.1887 Aadinarayana purchased the land from descendants of Venkat Rao. Under registered sale deed dt.10.8.1904, Poosapati Gajapathi Raju, Raja of Vizianagaram, purchased the land admeasuring Acs.20.00 from son of Adinarayana. The land was leased to Selagamsetty Rama Swamy, who is also tenant of Aadinarayana. After death of Rama Swamy, his successors cultivated the land. Be it also noted that this was joint family property of Maharaja of Vizianagaram and all these years Selagamsetty people were paying cist to Vizianagaram. A suit being O.S.No.495 of 1949 was filed on the file of the High Court of Judicature, Madras, for partition of properties of Maharaja. In the final decree proceedings, the property in question fell to the share of Kumararaja, who as noticed created MANSAS trust.

After coming into force of the Act, it appears, by reason of terms of decree in O.S.No.21 of 1963, dt.27.9.1963 the land was relinquished in favour of MANSAS by Kumararaja Sri Visveswara Gajapati Raju and thereafter it was given to MANSAS.

The SDT (Inams), made a publication under sub-section (3) of Section 3 of the Act on 12.2.1970 which ultimately ended in SDT granting ryotwari patta to MANSAS by proceedings dt.18.11.1978 of SDT, Vizianagaram under, Section 7(1) of the Act. After this, B.Chiranjeevi, husband of first respondent, made an application to Secretary, MANSAS, expressing willingness to purchase Acs.6.25 at the rate of Rs.200 per acre stating that he has taken this land on lease from Selagamsetty Narayana for a period of thirteen years prior to grant of patta in favour of the petitioner. First respondent purchased an extent of Acs.6.91 from Selagamsetty Narayana and seven others for an amount of Rs.5,000/- and filed a suit for declaration on the file of the Court of Senior Civil Judge, Vizianagaram. The said suit being O.S.No.91 of 1991 was dismissed on 31.7.1997 and ensuing appeal being A.S.No.82 of 1997 was also dismissed by the Court of Additional District Judge on 13.9.2000. The petitioner also filed a tenancy case, ATC No.2 of 1991 under Section 13 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 against first respondent for eviction on the ground of default. The same was dismissed on 26.9.1999. On appeal, however, in A.T.A.No.2 of 2000 the District Court, Vizianagaram, allowed the appeal on 26.9.2000 against which husband of first respondent unsuccessfully filed Civil Revision Petition No.4209 of 2000, which was dismissed on 16.10.2000 by this Court. Thereafter, in E.P.No.205 of 2000, petitioner took delivery of the property on 14.10.2000 and is allegedly in possession of the land. In the meanwhile, on appeal/application filed by first respondent, fourth respondent, i.e., Revenue Divisional Officer (RDO) by order dt.30.5.2001 dismissed

the appeal on the ground that the same is time barred. Aggrieved by the same, first respondent preferred a revision under Section 14A of the Act. Second respondent by impugned order set aside the orders of SDT and RDO and remanded the matter to the primary tribunal for fresh enquiry, after giving notice to petitioner as well as respondents and all interested persons.

A lengthy counter affidavit running into fifty-eight pages is filed by first respondent. It is, however, not necessary to elaborately refer to the same. The sum and substance of the same, as summarised by learned Senior Counsel appearing for first respondent, which would be suffice as noticed hereunder.

An institution claiming patta under the Act must hold the land on the date of coming into force of the Act. MANSAS was constituted under the trust deed dt.12.11.1958 and the land was given by Kumararaja to the trust on 27.11.1963 and therefore patta could not have been granted to MANSAS which could not have been holding the land as on 26.9.1956 when the Act came into force. First respondent purchased the land from Selagamsetty people under registered sale deed for Rs.5,000/-. The Tahsildar, Vizianagaram, issued a notification under the Act notifying his decision under sub-section (3) of Section 3 of the Act that the inam land covered by T.D.No.984 of K.L. Puram is not held by institution. By notice in From-V, dt.15.9.1977, SDT, Vizianagaram, required the persons interested in the land to appear before SDT for enquiry. This was followed by notice in Form-VI to MANSAS, who were representing inamdar's interest in the land. The SDT required inamdar and tenants to file a joint statement in regard to particular portion of this land to be given to inamdar towards 1/3rd share under Section 4(2)(b) and (c) and the land to be given to tenants. MANSAS represented inamdar and therefore they are only entitled to 1/3rd share and tenants whose interest was purchased by first respondent are entitled for balance of the share. Form-VII notice was also issued to Selagamsetty Narayana, one of the vendors of the petitioner, for determination of portion to be given to inamdar. However, curiously, on 18.11.1978, SDT issued proceedings holding MANSAS as person entitled to ryotwari patta under Section 7(1) of the Act in respect of entire land, but the copy of the proceedings was never communicated to Selagamsetty people or vendor pursuant to Form-VII notice. SDT never conducted any enquiry, but determined portion of inamdar and the tenants.

It is further case of first respondent that when she filed suit being O.S.No.91 of 1991 for declaration of title, in the written statement MANSAS mentioned about patta dt.18.11.1978, and after coming to know of the same, first respondent preferred appeal before the Revenue Divisional Officer. Under Section 3(3) of the Act, Tahsildar has to communicate the order and for non-communication the entire proceedings are vitiated. When the Revenue Divisional Officer dismissed the appeal, first respondent preferred revision under Section14A of the Act and second respondent rightly remanded the matter to SDT after setting aside the orders of the RDO.

Learned counsel for MANSAS, Sri M.Adinarayana Raju, submits that the second

respondent committed error within the jurisdiction, in that he has not considered all the material documents placed on record, including the judgment of the Civil Court as well as order of this Court in civil revision petition arising out of the proceedings under Andhra Tenancy Act. He would urge that petitioner was granted patta in November, 1978 and thereafter after long lapse of twenty-five years, second respondent ought not to have exercised the revisional jurisdiction under Section14-A of the Andhra Inams Abolition Act. According to the learned counsel, the power under Section 14A is not available after long delay, especially when the matter is covered by judgment of the Civil Court as well as the authorities under the Andhra Tenancy Act. Lastly he would urge that what was challenged before second respondent was proceedings of SDT dt.18.11.1978, but second respondent wrongly set aside the order of the Revenue Divisional Officer, though the same was not specifically made subject matter of the revision before second respondent. In support of these submissions, learned counsel for the petitioner has placed reliance on the decision of this Court in **A.Kodanda Rao v. Government of A.P.,** and **Collector v. P.Mangamma.**

Per contra, learned Senior Counsel for first respondent, Sri K.Subramanya Reddy, submits that the grant of patta in favour of petitioner by SDT in 1978 is vitiated by illegality, irregularity and impropriety, in that though petitioner as an institution was not entitled to patta in respect of the entire land and though they were entitled to the extent of share of inamdar, who is Kumararaja of Vizianagaram, SDT, it was granted patta in respect of entire land in S.No.64/2 and therefore second respondent is entitled to exercise power under Section 14-A. In such an event, according to the learned Senior Counsel, especially when proceedings of SDT dt.18.11.1978 are not served on first respondent or her predecessor in title, the question of delay and laches would not bar the exercise of jurisdiction by second respondent. He would urge that there is no delay and laches on the part of first respondent and immediately after coming to know of the proceedings of SDT, she preferred appeal before RDO and when the same was rejected, she approached second respondent under Section14A of the Act. Learned Senior Counsel has taken this Court through various notifications issued under the provisions of the Act to show that the original inamdar was entitled only to 1/3rd share of the land and first respondent and/or predecessors being tenants of the land were entitled for 2/3rd share of the land. The SDT from the stage of Form-VII notice has committed gross irregularity in issuing patta for the entire land to petitioner in whose favour Kumararaja gave the property only to the extent of his share. When the orders of SDT were not communicated to the tenants, who are having interest in the land, it is only proper for the second respondent to remit the matter to SDT. In support of these contentions, he relied on decision of this Court in **Yegireddi Yerakamma v. Sub-Collector, Parvatipuram,** and **State of Orissa v. Brundaban Sharma.**

Nextly, adverting to the decree of the Civil Court in O.S.No.91 of 1991, learned Senior Counsel would submit that Inams Abolition Act has over-riding effect over other laws. Notwithstanding anything inconsistent contained in any other law for the time being in force or any Statute having effect, the provisions of the Inams Abolition Act would apply, and that Civil Court decree is “instrument” within the

meaning of Section 15 and therefore the same does not bar the petitioner from filing appeal before RDO and revision before Commissioner. In support of this submission, learned counsel placed strong reliance on the decision of this Court in **Dudik Bangaru v. Subnivasu Rama Rao**.

Though learned counsel for the petitioner and learned counsel for first respondent have argued the matter elaborately, having regard to the fact that second respondent remanded the matter to the Primary Tribunal/authority, while dealing with various submissions, this Court has to follow a path of caution, or else, observations of this Court, if any, might influence the decision-making process of the authorities under the Act. Therefore, this Court is not inclined to go into the matter in detail. Nonetheless, the question of exercise of power under Section 14A of the Act and question of delay and laches on the part of first respondent are two essential points that arise for consideration in the matter. The other questions need to be considered passingly and superficially on *prima facie* consideration only.

Question of exercise of jurisdiction under Section 14-A of the Act.

Section 14A of the Act which was inserted in A.P.Inams Abolition Act by subsequent amendment No.20 of 1975 reads as under.

14A. Revision:-

1. Notwithstanding anything contained in this Act, the Board of Revenue may, at any time either *suo motu* or on application made to it, call for and examine the records relating to any proceedings taken by the Tahsildar, the Revenue Court or the Collector under this Act for the purpose of satisfying itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision made or order passed therein; and if, in any case, it appears to the Board of Revenue that any such decision or order should be modified, annulled, reversed or remitted for re-consideration, it may pass orders accordingly.

2. No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation.

The power of Board of Revenue (now the Commissioner of Appeals) is exercisable on an application made by an aggrieved person and/or *suo motu* as well. While exercising power, it would be well within the competence of the revisional authority to modify, annul, reverse or remit for reconsideration of any decision taken by Tahsildar, Revenue Court, or Collector under the Inams Abolition Act. The circumstances under which the revisional authority can do so are when the decision of lower authority is irregular, incorrect, illegal or improper. Yet another aspect of the matter is revisional power cannot be exercised unless a person likely to be prejudicial effected of giving notice of representation.

The question of illegality like, irregularity, impropriety are definite concepts

and though conceptually to some extent irregularity, impropriety and incorrectness are within the ambit of "concept of illegality", sometimes for considerations more than one, depending on factual and contextual situations, all the four concepts differ, though not substantially. For example, an order vitiated by violation of principles of natural justice would be illegal as well as improper and incorrect. In a given case, if an authority has passed order within the ambit of law, but relies on some other fact regarding which aggrieved person is not put on notice, that would be a case of impropriety.

A decision would be illegal if it contravenes or exceeds the terms of the power which authorised making of decision or if it is pursuant to an object other than for which the power to make decision is made. A decision would be irregular if the same does not follow the procedure laid down by Statute conferring power to make decision. The incorrect and improper decisions would fall within these two points depending on the circumstances. In the case of grant of ryotwari patta under Inams Abolition Act, if an authority, say, Special Deputy Tahsildar (Inams); fails to follow the procedure contemplated under Section 3 and Rules 3, 4, and 5 and A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Rules, 1957 (for short, the Rules) and issues patta under Section 7(1), the same would be illegal, irregular and incorrect. If SDT fails to issue notice to all the persons interested in the land, it would be vitiated by impropriety of not issuing notice as a general rule as well as in strict compliance with the Rules.

With the assistant of the learned Senior Counsel, I have gone through various notices issued by Tahsildar under Section 3(2) of the Act as well as general notice issued by SDT. *Prima facie* before issuing patta in favour of petitioner, tenants were not issued any notice and copy of the proceedings dt.18.11.1978 was not communicated to them. Therefore, the jurisdiction under Section 14A is squarely attracted and by an elaborate order, after elaborate exercise, second respondent *prima facie* came to the conclusion that SDT committed illegality and irregularity in granting patta to petitioner for the land in question. Therefore, in exercise of power, second respondent cannot be said to have violated any provisions of the Act or the Rules.

Question of delay in exercise of jurisdiction

Section 14A of the Act does not prescribe any time limit. It is settled rule of interpretation that the power conferred by the Legislature must be exercised within a reasonable time. In **State of Gujarat v. Patel Raghav Natha** the Supreme Court held that whenever statute confers power to revise orders at any time, the power shall be exercised within reasonable time and what would be the reasonable time must be decided on the facts and circumstances of each case and the nature of the order which is being revised. This view was reiterated in subsequent decisions viz., **Mansaram v. S.P.Pattack,** and **Ram Chand v. Union of India.**

In **Hindustan Times v. Union of India,** the Supreme Court considered the scope of Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, which conferred power on the authorities to recover damages

from the employer for contravention of the provisions of the Act and the scheme framed thereunder. The power to recover damages was not subjected to any period of limitation. Dealing with this aspect, the Supreme Court observed that the Provident Fund amount deducted by the employer from the wages of employees are deemed to have been entrusted for the purpose of paying contribution and therefore the Legislature did not thought fit to make any provisions prescribing the period of limitation. After referring to **State of Gujarat v. Patel Raghav Natha** (supra) and **Ram Chand v. Union of India** (supra), the Supreme Court laid down as under.

> The power under Section 14-B of the Act should be exercised within a reasonable time. The reason is that in the cases where rule of 'reasonable time' was applied the exercise of powers by the authority at a very belated stage was likely to result in the deprivation of property which rightly and lawfully belonged to the person concerned, the position under Section 14-B of the Act (sic.) is totally different. The employer who has defaulted in making over the contributions to the Trust Fund had, on the other hand, the use of monies which did not belong to him at all. Such a situation cannot be compared with the above line of cases, which involve prolonged suspense in regard to deprivation of property. In fact, in cases under Section 14-B if the Regional Provident Fund Commissioner had made computations earlier and sent a demand immediately after the amounts fell due, the defaulter would not have been made to use these monies for his own purposes or for his business. It does not lie in the mouth of such a person to say that by reason of delay in the exercise of powers under Section 14-B, he had suffered loss. On the other hand, the defaulter had the benefit of the boon of delay which "is so dear to debtors".

In **Collector v. P.Mangamma** (supra), the Supreme Court after referring to earlier decisions was dealing with the case of cancellation of land assignments under the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 and Section 166B of the A.P.(Telangana Area) Land Revenue Act, 1317 Fasli on the ground that they were irregular assignments. The cancellation was done after lapse of thirty years. On a challenge, learned Single Judge of this Court did not interfere in the matter and disposed of Writ Petitions giving liberty to submit their objections. But, the Division Bench, however, found fault with action initiated for cancellation after thirty years. In the appeal before the Supreme Court by the District Collector, the Supreme Court while remanding the matter to the Division Bench of this Court, considered the question of reasonable time within which power has to be exercised under the two enactments referred to hereinabove. It was held:

> …It would be hard to give an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the decision of the Judge usually determines what is "reasonable" in each particular case; but frequently reasonableness "belongs to the knowledge of the law, and therefore to be decided by the courts". It was illuminatingly stated by a

> learned author that an attempt to give a specific meaning to the word "reasonable" is trying to count what is not a reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know. [See Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar and Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd]. As observed by Lord Romilly, M.R. in Labouchere v. Dawson it is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is reasonable under the circumstances. Reasonable, being a relative term is essentially what is rational according to the dictates of reason and not excessive or immoderate on the facts and circumstances of the particular case.

Keeping in view the principles laid down by the Supreme Court in the above cases, the question raised by the learned counsel for the petitioner has to be considered in the light of the facts and circumstances of this case.

The Act has come into force with effect from 25.9.1956. Section 3 of the Act deals with determination of inam lands. After commencement of the Act, the Tashildar has to enquire into the matter and determine whether particular land is inam land whether such inam land is in ryotwari, zamindari or inam village and/or such land is held by institution. As per Section 2(j) of the Act Tahsildar means the Tahsildar having jurisdiction over the area and also includes Deputy Tahsildar in-charge of Taluk or Sub-Taluk. It is not denied that for dealing with the matters under Inams Abolition Act Special Deputy Tahsildars were appointed, i.e., SDT (Inams). In this case, SDT/Tahsildar issued notification, determined under Section 3(1) read with Rule 3 of the Rules holding that the land is not held by any institution. Same was done after conducting enquiry under sub-section (2) of Section 3. Thereafter, as required under Rule 5 of the Rules, SDT, Vizianagaram, issued notice in Form-V to the tenants as well as petitioner. This was followed by another notice under Form-VI under Rule 6 and Form-VII under Rule 6. At this stage, the notice was issued to petitioner as well as selagamsetty people. At the final stage of issuing patta, however, though proceedings are passed on 18.11.1978, SDT did not communicate the order as required under sub-section (3) of Section 3 of the Act. It is categorically stated by first respondent that she or selagamsetty people had no knowledge of the proceedings of SDT dt.18.11.1978 granting ryotwari patta in favour of petitioner. In such an event, first respondent cannot be expected to file an appeal before the Revenue Divisional Officer within sixty days as per Section 3(4) of the Act. Further, at the initial stages of issuing notices in Form-V, VI and VII, SDT, *prima facie* determined that the petitioner would be entitled only to 1/3rd share in the land which would have gone to Kumararaja, Vizianagaram. But, curiously, in the proceedings of SDT, dt.18.11.1978 it was determined that only the petitioner is entitled for ryotwari patta. As per Section 4(1) of the Act institution holding land on the date of commencement of the Act shall alone be entitled for ryotwari patta. When the petitioner was constituting Trust deed dt.12.11.1958, it could not have claimed benefit under Section 4(1) of the Act. Therefore, *prima facie*, Commissioner was correct in coming to the conclusion that SDT issued ryotwari patta in favour of petitioner without any representation or without verifying the title of the said trust over the land.

In the background of the *prima facie* conclusions, yet another aspect of the matter is that when first respondent filed suit being O.S.No.91 of 1991 for declaration of title, petitioner filed written statement stating that for the entire land patta was granted by SDT. Having come to know this, first respondent filed appeal before the RDO on 9.5.2001 which was rejected by memo dt.30.8.2001 on the ground that the appeal is preferred long after expiry of period prescribed under the Act. Indeed, as per Section 3(4) of the Act an aggrieved person may appeal to the Revenue Divisional officer/Revenue Court within sixty days from the date of communication of the decision. Admittedly, first respondent came to know about the proceedings of the SDT only when petitioner filed written statement in the suit and therefore the RDO was clearly in error in rejecting the appeal. Be that as it is, when the person aggrieve has no notice of the order, or the same was not communicated, the ground of delay and laches may not prevent such aggrieved person to seek redressal under Section 14A of the Act.

In **Yegireddi yerakamma v. Sub-Collector, Parvatipuram** (supra) this Court interpreted sub-section (4) of Section 3 of the Act. In the said case, Polinaidu Valasa Village in Parvathipuram Taluk of Srikakulam District was held to be not an estate. In the *suo motu* enquiry under Section 3 of the Inams Abolition Act, the Inams Tahsildar declared the lands as inam lands by *ex parte* order dt.25.12.1961. Said decision was never communicated to the persons aggrieved as required under sub-section (3) of Section 3 of the Act. When inamdars initiated proceedings for eviction of the occupants they came to know about the proceedings of the Inams Tahsildar when the occupants obtained certified copy and preferred appeal to RDO. The RDO dismissed the appeal as time barred. In the Writ Petition this Court quashed the order of the Revenue Court and restored the matter back for disposal on merits and laid down as under.

> The failure or omission to communicate the decision to the parties concerned would not deprive an aggrieved party from preferring an appeal under sub-section (4) within 60 days from the date of communication. The words "from the date of communication of the decision" occurring in sub-section (4) of Section 3 of the Act must be construed in a fair and reasonable way. The communication contemplated in section 3(4) must be an effective and actual communication to the person or institution aggrieved by the decision of the Tahsildar under sub-section (3) to enable him to prefer an appeal to the revenue Court. The Legislature has thought fit to make it beyond controversy that a right of appeal to the aggrieved party is preserved in tact until the expiry of 60 days from the date of communication of the decision. **Where the mode of communication of the decision to the parties is not specified in the provisions of the Act or the rules made thereunder, it must be construed as any valid and lawful mode of communication. It may be by registered post or by personal service or by any other process available in law. Mere publication in form II notice or the knowledge of the parties relating to the decision in some other way would not disentitle them from exercising their right of preferring an appeal to the Revenue Court within sixty days from the date of communication of the decision. From the language of sub-sections (3) and (4) of Section 3, I am clear in my mind that the framers of the Act intended an effective and actual communication of the decision to the concerned parties as a fact. Under no circumstances the expression**

"communication" in sub-sections (3) and (4) of Section 3 can be construed in any other way.

(emphasis supplied)

I n **State of Orissa v. Brundaban Sharma** (supra) , the Supreme Court has considered the case arising under Section 38-B of the Orissa Estates Abolition Act, 1951 which conferred *suo motu* revisional powers on the Board of Revenue. The Board of Revenue of Orissa passed orders for cancellation of patta given to the respondents therein after lapse of twenty-seven years. When the same was challenged, a Division Bench of Orissa High Court invalidated the orders of the Board of Revenue holding that revisional power was illegally exercised after twenty-seven years. The Supreme Court, however, reversed the judgment of Division Bench of Orissa High Court. The Supreme Court in the judgment observed that the respondent obtained patta without producing any evidence, that the proceeding under which patta was granted to the respondents was illegal, improper and incorrect, that if the revisional jurisdiction is not exercised, it would result in miscarriage of justice and therefore it was proper for the Board of Revenue to exercise revisional jurisdiction. It was observed thus:

> The obvious intendment in conferring *suo motu* power was to prevent suppression of the agricultural land, liable to be included, or held by the declarant and he cannot plead in his defence his own fraud or suppression and take shelter thereunder. When the original order was vitiated by illegality or impropriety committed by officer or authority or was passed due to suppression of the material facts or fraud, it was open to the tribunal to reopen the same. The limitation would start running from the date of the discovery of the fraud or suppression of material or relevant fact or omission thereof and an order under Section 17 in that Act was not a bar to exercise *suo motu* revisional power. Accordingly, the appeal was allowed. The order of the High Court was set aside and that of the Additional Commissioner initiating *suo motu* proceedings and its order was held to be valid.

After referring to **State of Gujarat v. Patel Raghav Natha** (supra) and **Laxminarayan Sahu v. State of Orissa**, the Supreme Court explained the concept of reasonable time in the following manner.

> What would be a reasonable time so as to be immune from the attack that the power has been exercised in an unreasonable manner would depend upon the facts and circumstances of the case…. It is therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. **Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice in violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the facts scenario in a given case. Take a case that patta was obtained**

fraudulently in collusion with the officers and it comes to the notice of the authorities after long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order ? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right ? The answers would be no.

(emphasis supplied)

Therefore, having regard to the circumstances on which this Court can only make *prima facie* observations as above, would not render the impugned order invalid merely because second respondent exercised revisional jurisdiction after long lapse of time, I do not find any merit in the submissions made by the learned counsel for the petitioner.

Effect of judgments of Civil Court

Learned counsel for the petitioner contends that fact that suit filed by first respondent is dismissed operates *res judicata* and therefore second respondent committed error in not considering the same. Learned counsel for the first respondent has taken me through judgment of the trial Court in O.S.No.91 of 1991 as well as appellate Court in A.S.No.82 of 1997. To say the least, both the Courts have dismissed the claim of first respondent on the ground of jurisdiction having regard to Section 14 of the Inams Abolition Act and therefore passing observations, if any, do not operate as *res judicata*. However, this Court hastens to add that this matter has to be gone into in detail because the question of *res judicata* is always mixed question of fact and law. Second respondent was correct in not adverting to this aspect of the matter.

In the result, for the above reasons, I do not find any infirmity warranting interference with the orders of second respondent. The Writ petition is devoid of merits and is liable to be dismissed. It shall, however, be open to the petitioner to raise all the grounds including the question of *res judicata* and all other pleas before the Inams Tahsildar/ SDT (Inams) when the enquiry is conducted afresh by producing all the necessary documents. This liberty would be equally available to first respondent as well. All the authorities exercising jurisdiction under the Inams Abolition Act are directed to decide the matter independently without being influenced by any observations made in this judgment. Be it noted, the observations if any in favour or against the contesting parties are only prima facie observations and conclusions while deciding the questions raised in the Writ Petition. Those observations and conclusions are not intended to be of any binding nature nor would prohibit independent de novo enquiry as directed by second respondent.

The Writ Petition is accordingly dismissed. There shall be no order as to costs.

(V.V.S.RAO, J)

14.12.2004

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NOTE: LR COPY BE MARKED.

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To

1. One fair copy to the Hon'ble Sri Justice V.V.S.Rao (for His Lordship's kind perusal)

2. The Commissioner, Appeals, Land Administration, A.P., Abids, Hyderabad.

3. The Collector, Vizianagaram District, vizianagaram.

4. The Revenue Divisional Officer, Vizianagaram District, Vizianagaram.

5. The Mandal Revenue Officer, Vizianagaram Mandal, Vizianagaram.

6. The Special Deputy Tahsildar (Inams), Vizianagaram.

7. 2 CCs to the G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

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